IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1522 of 1983

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHOMED RAHEMAN IRFANBHAI

Versus

SWAMI VISHNAVCHARYA

Appearance:

MR MB GANDHI for Petitioner

MR PV NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 24/12/1999

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act at the instance of the original defendant tenant.

2. The respondent plaintiff had filed a suit against

the defendant tenant for recovery of arrears of rent and municipal taxes due and payable. The trial court decreed the suit in favour of the plaintiff Trust. The defendant thereafter preferred an appeal under section 29(1) of the said Act, which was also dismissed. Hence the present revision.

3. There is no controversy that the respondent plaintiff who sued the defendant was a Trust, which was also the owner of the property and hence the land owner. Thus suit was filed through the Managing Trustee of the Trust, and admittedly other Trustees were not joined as co-plaintiffs or as parties to the suit.

4. The only contention raised before me in the present revision is that where the landlord or owner of the property is a Trust, such Trust cannot sue its tenant while acting only through Managing Trustee or through some of the Trustees of the Trust and unless all the Trustees are joined in the suit, the suit would be non-maintainable.

4.1 In support of this contention learned counsel for the applicant seeks to rely upon a Full Bench decision of this Court in the case of Atmaram Vs. Gulamhusein, reported in 13 GLR page 828.

4.2 There cannot be any controversy as to the principle laid down by the aforesaid decision nor can there be any misunderstanding about the ratio laid down.

4.3 The Full Bench has examined in the said decision the duties, functions and powers of a Trustee in the context of section 48 of the Bombay Public Trust Act, and has also examined the scope and effect of section 11 of the Indian Trusts Act.

4.4 In the aforesaid context the Full Bench held to the effect that granting of a lease is not a matter which can be delegated by a trustee to any other trustee in a regular course of business. It must follow as a necessary corollary that the determination of a lease also cannot be regarded as a matter which can be delegated by a co-trustee to another co-trustee or to any one else. The power and function to determine a lease is of the same nature as the power and function to grant a lease and if one cannot be delegated, equally and other cannot be. Both functions are affected with a fiduciary duty with respect to which all co-trustees are bound to exercise their judgement and no one co-trustee can abdicate the exercise of his judgement by delegating

these functions to his co-trustee or to any other person. The aforesaid decision (in para 8) has further held to the effect that it is clear that one co-trustee cannot give notice to quit determining the tenancy. The decision to terminate the tenancy must be taken by all the co-trustees. The formal act of giving notice to quit pursuant to the decision taken by all the co-trustees may be performed by one co-trustee on behalf of the rest. The notice to quit given in such a case would be a notice given with the sanction and approval of all the co-trustees and would be clearly a notice given by all co-trustees.

4.5 Thereafter the said decision (in para 9 of the judgement) laid down the principle to the effect that the principle embodied in this section must apply equally to a public religious or charitable trusts. Since all co-trustees must join in the execution of the trust, and recovery of possession of the property from the tenant after determination of the lease would be a duty arising in the execution of the trust, all co-trustees must join in filing a suit in filing a suit to recover possession of the property from the tenant, unless the instrument of the trust otherwise provides. Therefore, unless the instrument of trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. No one single co-trustee, even he be a managing trustee unanimously chosen by the co-trustees, can maintain such a suit against the tenant without joining the other co-trustees.

4.6 From a plain reading of the observations made in the aforesaid judgement, the relevant portions whereof have been discussed hereinabove, it becomes obvious that the principle laid down therein is that only the trust acting through all the trustees can determine the lease of a tenant, in the context of the Bombay Rent Act. Thus, where the trust files a suit for recovery of possession, it must be by all the trustees acting on behalf of the trust.

4.7 The net sum and substance of the aforesaid decision is that there are certain functions of the trust which can only be performed by all the trustees acting jointly, and such functions which cannot be independently performed by one (or less than all the trustees) are functions such as determining the tenancy of the tenant under the Bombay Rent Act and filing a suit for possession under the said Act.

4.8 As aforesaid, there cannot be any controversy as to the principle laid down in the said decision. What requires to be noted, however, is that the said principles and the ratio laid down in the said decision have no application to the facts and circumstances of the instant case.

5. Admittedly the suit is not a suit for eviction or for possession of the leased premises, and is not a suit based on determination of lease whatsoever. The suit is simply for recovery of arrears of rent and municipal taxes due and payable by the tenant by virtue of the acknowledgment of debt executed by the tenant which is at Exh.21 on record.

5.1 It is pertinent to note that execution of Exh.21 is not disputed. The said document, so far as the material recitals are concerned, states that the tenant has voluntarily handed over possession of the leased premises to the landlord, that he has no tenancy rights now surviving in the said premises, and that the sums specified in the said document (split up under different heads of arrears of rent and arrears of municipal taxes) are due and payable and the debt is thereby acknowledged. The document then recites that in respect of this debt, the tenant shall pay the sum by monthly instalment of Rs.200/- and in case he fails to do so the landlord trust may recover the same in accordance with law. As aforesaid, the execution of Exh.21 is not in dispute. There also cannot be any dispute that the said document categorises the amounts due as arrears of rent and separately the arrears of tax, and the said document also amounts to an acknowledgment of debt. Thus, when the trust filed suit for recovery of the money due under the said document, the trust was only seeking a money decree in respect of the acknowledged debt stated and admitted in Exh.21. There was absolutely no question of either determination of the tenancy nor any question of recovering possession on the facts and circumstances of the case, which is also obvious from the fact that no such reliefs were necessary looking to the admission made in Exh.21 (to the effect that peaceful and vacant possession has been handed over voluntarily to the landlord). Obviously, therefore, on the facts and circumstances of the case the ratio in the case of Atmaram (supra) would have no application to the facts of the case.

6. Learned counsel for the applicant also sought to rely upon a decision of the Madras High Court in the case of Vavuttu Naicken Vs. Venkata Sesha Aiyar, reported at

AIR 1914 Madras 119(1). In the said decision the Madras High Court held to the effect that "when a tenant has dealt with a co-owner as a sole landlord, he may by so dealing, be estopped from denying the title of the person who let him into possession. If the decision in Raja Ram Vs. Ram Boy [(1913) 18 Indian Cases 77] goes further than this, we are unable with great respect to agree with it." These observations of the Madras High Court have, in my opinion, no bearing on the controversy in hand. The conclusion drawn at the end of the discussion in the said decision is only to the effect that no estoppel would arise in that case and therefore the case was remanded to the trial court with a direction that the plaintiffs may be afforded an opportunity of joining such of the other trustees as are willing to join as co-plaintiffs, and the rest as defendants.

7. It is also pertinent to note that the aforesaid decision of the Madras High Court does not have any bearing on the case inasmuch as the instant suit is not really a suit by a landlord against a tenant (in respect of a subsisting tenancy) for recovery of rent. As aforesaid, a plain reading of the document at Exh.21 indicates that it is an acknowledgment of an existing debt, coupled with an acknowledgment of the obligation to pay the debt. In that sense, therefore, and also on the facts of the case, the relief sought is by a creditor against a debtor on the basis of an acknowledgment of debt, and the relationship of landlord and tenant is only incidental, and is relevant only for the purpose of explaining the background as to how the debt came into existence. A plain reading of the document at Exh.21 also indicates that on the day when the defendant executed this acknowledgment of debt, he had already handed over possession of the premises to the owner thereof.

8. Thus, on the facts and circumstances of the case the suit filed by the plaintiff was in the nature of a money suit based on an acknowledgment of debt at Exh.21, and the relationship of landlord and tenant was only incidental for the purpose of explaining how the debt came into existence.

9. In the premises aforesaid, the two decisions sought to be relied upon by the learned counsel for the applicant herein would have no application on the facts of the case.

10. The decisions of the trial court and lower appellate court are, therefore, required to be upheld.

Consequently there is no substance in the present revision and the same is dismissed. Rule is discharged with no order as to costs.

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